

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

MATTHEW CARL VOGEL,

Plaintiff,

Case No. 17-cv-12425

v

Hon. Laurie J. Michelson  
Mag. Judge R. Steven Whalen

MICHIGAN DEPARTMENT OF NATURAL  
RESOURCES, MICHIGAN STATE POLICE,  
TUSCARORA TOWNSHIP POLICE DEPARTMENT,  
CONSERVATION OFFICER DANIEL RAY DUNCAN,  
RANGER DANIEL DAVID ASHENFELTER,  
SW4 DOUGLAS CHRISTOPHER WILDERMAN,  
Individually and in their official capacities as officers  
and/or employees of the Michigan Department of  
Natural Resources; OFFICER JEFFREY JOHNSON,  
OFFICER STACY LYNN LAWRENCE, a/k/a STACY  
LYNN LaLONDE, CHIEF OF POLICE GORDON  
MORELL TEMPLE, individually and in their official  
capacities as police officers for Tuscarora Township,  
Cheboygan County, Michigan, Jointly and Severally,

Defendants.

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**DEFENDANTS TUSCARORA TOWNSHIP POLICE DEPARTMENT,  
TEMPLE, LAWRENCE, JOHNSON’S MOTION TO REASSIGN CASE TO  
THE NORTHERN DIVISION**

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NOW COME Defendants, TUSCARORA TOWNSHIP POLICE DEPARTMENT, GORDON TEMPLE, STACY LAWRENCE, and JEFFREY JOHNSON, by and through their attorneys, McGRAW MORRIS, P.C., and, for the reasons set forth in the accompanying brief, respectfully request that this Honorable Court issue an order transferring and reassigning this case to the Northern Division.

Furthermore, defense counsel states that he has contacted Plaintiff’s counsel to explain the nature of this Motion and has sought concurrence in the relief requested by this Motion, but that Plaintiff’s counsel has not responded and/or not acquiesced in the relief requested herein.

WHEREFORE, for the reasons stated more fully in the brief attached to this Motion, Defendants, Defendants, TUSCARORA TOWNSHIP POLICE DEPARTMENT, GORDON TEMPLE, STACY LAWRENCE, and JEFFREY

JOHNSON, respectfully request that this Honorable Court grant their Motion and issue an order transferring this case to the Northern Division.

Respectfully submitted,

**McGRAW MORRIS P.C.**

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Dated: February 5, 2018

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## TABLE OF CONTENTS

TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITY .....	iii
INTRODUCTION.....	1
LEGAL STANDARD.....	1
ARGUMENT .....	1
CONCLUSION .....	3

## TABLE OF AUTHORITY

### Cases

*Braxton v. Hertier*, unpublished opinion of the United States District Court for the Eastern District of Michigan Case No. 14-12054, decided Aug. 31, 2015; 2015 U.S. Dist. LEXIS 130594 .....1, 2, 3

### Statutes

28 U.S.C §1406 .....2  
28 U.S.C. §1404 .....1, 2

### Rules

E.D. Mich. L.R. 83.10 .....1, 2

## **INTRODUCTION**

This matter stems from an incident at Burt Lake State Park in Cheboygan County, Michigan. Amended Complaint, ¶20, RE 4, Pg ID 39; Arrest Report, RE 1, Pg ID 14. Originally, this case was assigned to the Eastern District of Michigan, Northern Division before the Honorable Thomas L. Ludington. On July 31, 2017, the Clerk of Court issued a notice reassigning the case to the Southern Division. RE 3. However, the Northern Division in Bay City is about 100 miles closer to Cheboygan County than the Southern Division in Detroit, Michigan, where Hon. Laurie J. Michelson holds court.

## **LEGAL STANDARD**

Decisions to reassign or transfer cases to a different division within the same federal district are governed by 28 U.S.C. §1404 and are within the sound discretion of the court. *Braxton v. Hertier*, unpublished opinion of the United States District Court for the Eastern District of Michigan Case No. 14-12054, decided Aug. 31, 2015; 2015 U.S. Dist. LEXIS 130594, \*3-4 (internal citations omitted).

## **ARGUMENT**

Originally, this case was assigned to the Northern Division, presumably because the incident occurred in Cheboygan County, which is in the Northern Division. RE 4, ¶20; E.D. Mich. L.R. 83.10(a)(2). Thereafter, the case was reassigned to the Southern Division. RE 3. While no explanation was given, Defendants presume this was done because Plaintiff avers that he resides in Howell, Livingston

County, Michigan, which is in the Southern Division. RE 4, ¶2; E.D. Mich. L.R. 83.10(a)(2). Although Pursuant to 28 U.S.C. §1404(a) and 28 U.S.C §1406, in the interest of justice and for the convenience of parties and witnesses, the Court may transfer a civil action to any other division where it might have been brought.

In *Braxton v. Heritier*, the court encountered an extremely similar issue and, as such, its analysis is extremely instructive. There, Braxton alleged claims under §1983 against former Saginaw police officers. When filed, the case was assigned to the Southern Division. A little over a year after the case was filed, defendants moved to have the case transferred to the Northern Division. In its analysis, the court first conceded that venue was proper in the Southern Division under the priorities outlined in E.D. Mich. L.R. 83.10. Nevertheless, the concluded that the case *should* be transferred to the Northern Division. *Id.*, at \*6.

In this case, the only factor that weighs in Plaintiff's favor is that he resides in Howell, which is in the Southern Division. All other factors weigh heavily in favor of reassigning this case to the Northern Division. Just as in *Braxton*, under E.D. Mich. L.R. 83.10, this case could have been assigned to the Northern Division because the action arose in Cheboygan County, which is in the Northern Division. More like *Braxton*, the events unquestionably occurred in Cheboygan County. Amended Complaint, ¶20, RE 4, Pg ID 39. Likewise, Tuscarora Township and its Defendants are all located in the Northern Division and, upon information and belief, the Michigan State Police and the Michigan Department of Natural Resources



defendants are all located in the Northern Division, in or around Cheboygan County. Moreover, just like in *Braxton*, public interest in resolving this matter favors the Northern Division as this incident arose in Burt Lake State Park in Cheboygan County. Additionally, the Tuscarora Township Police Department is a small department, with only a police chief and small number of officers. Requiring these officers to litigate in the Southern Division would add an additional 3 hours to any court activity which they attend. Clearly, this would put an unnecessary strain on the community and the officers. Finally, just as in *Braxton*, the procedural posture of this case favors transfer, as this case is only just beginning; the Court has not even issued a Case Management Order. Accordingly, reassigning this case back to the Northern Division is warranted and appropriate.

### **CONCLUSION**

WHEREFORE, Defendants, Tuscarora Township, Gordon Temple, Jeffrey Johnson, and Stacy Lawrence, respectfully request that this Honorable Court issue an order reassigning this case to the Northern Division.

Respectfully submitted,

**McGRAW MORRIS P.C.**

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2018, I caused to be served a copy of the attached DEFENDANTS TUSCARORA TOWNSHIP POLICE DEPARTMENT, TEMPLE, LAWRENCE, JOHNSON'S MOTION TO REASSIGN CASE TO THE NORTHERN DIVISION AND CERTIFICATE OF SERVICE, upon counsel of record; namely, JAMES J. MAKOWSKI, 6528 Schaefer, Dearborn, MI 48126, and ADAM P. SADOWSKI, P. O. Box 30736, Lansing, MI 48090; via the United States District Court ECF System on the aforementioned date.

McGRAW MORRIS P.C.

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